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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/821,593	04/09/2004	Richard Alan Morgal	MORGAL-11-CIP	1563
7590 William C. Boling, Esq. 5656 Hamill Avenue San Diego, CA 92120				
04/01/2008				
EXAMINER				
HALL, ASHA J				
ART UNIT		PAPER NUMBER		
1795				
MAIL DATE		DELIVERY MODE		
04/01/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action
Before the Filing of an Appeal Brief

Application No.

10/821,593

Applicant(s)

MORGAL, RICHARD ALAN

Examiner

ASHA HALL

Art Unit

1795

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 03 March 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-14.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

/Alexa D. Neckel/
Supervisory Patent Examiner, Art Unit 1795

/A. H./
Examiner, Art Unit 1795

Continuation of 11.

The request for reconsideration has been considered but does NOT place the application in condition for allowance because: the arguments presented to the Examiner are not persuasive, and the proposed cancellation of claims 15-33 does not place the application in condition for allowance, therefore the Examiner has maintained the rejection of claims 1-14 for the reason set forth below.

1) The Applicant argues that in the first Office Action issued May 2, 2007, Claims 2 and 9 were rejected only as anticipated by Cluff. In the first responsive Amendment filed August 30, 2007, the subject matter of Claims 2 and 9 was incorporated directly into Claims 1 and 8, respectively, and the Applicant is arguing that this amendment did not necessitate a new ground of rejection.

The Examiner respectfully disagrees. The incorporation of claims 2 and 9 into claims 1 and 8 respectively changes the scope of the claims in relation to the dependant claims. The amendments of claim 2 and 9 necessitated the new ground of rejection see MPEP 706.07(a).

2) The applicant argues that the prosecution of the instant application will benefit significantly from consideration of the IDS enclosed herewith. The disclosed papers document the examination, by US examiner Alan Diamond, of PCT application PCT/US02/32550, which is substantially identical to the instant application as to currently pending independent Claims 1 and 8 (corresponding to Claims 2 and 23 of PCT/US02/32550). Examiner Diamond's conclusions support the Applicant's assertion, set forth in subsequent remarks, that Claims 1-14, as presently pending, are nonobvious over the cited combination of Cluff and Laing.

The Examiner has considered the search history of PCT/US02/32550, but did not find the search history persuasive to put the application in condition for allowance for the reasons set forth below.

3) The Applicant further argues that a previous Examiner Alan Diamond found claims novel and inventive over the cited prior art in respect to the application PCT/US02/32550.

The Examiner is not held to Examiner Alan Diamonds findings and has in fact performed an extensive search to concluded that claims 1-4, 7-10, 13 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cluff in view of Laing for the reasons set forth in the Final rejection.

4) The Applicant argues that Laing fails to solve the problem of two axes tracking, but copied the Applicant's invention.

With respect to claim 1, the Examiner has found Cluff (US 4,771,764) as disclosing the two axis tracking pontoon solar collector and Laing (US 5,445, 177) as solving the deficiencies of Cluff in regard to failing to disclose a liquid bath as the coolant. Liang discloses a solar power platform (an analogous to Cluffs solar converter) and further teaches that the waste heat can be absorbed by the water of the liquid layer/liquid bath and transferred to a heat exchanger and then cooled water/ coolant can be fed via an open trough running along the periphery of the platform.

Furthermore, it the Examiner cannot make a decision based on the Applicant's comment that Laing "copied" the Applicant's ideas. The Office does not have support for these allegations and therefore we cannot comment on this matter.